

1 KEKER & VAN NEST LLP
2 ROBERT A. VAN NEST - # 84065
3 rvannest@kvn.com
4 CHRISTA M. ANDERSON - # 184325
5 canderson@kvn.com
6 DANIEL PURCELL - # 191424
7 dpurcell@kvn.com
8 633 Battery Street
9 San Francisco, CA 94111-1809
10 Telephone: (415) 391-5400
Facsimile: (415) 397-7188

7 KING & SPALDING LLP
8 BRUCE W. BABER (pro hac vice)
9 bbaber@kslaw.com
10 1180 Peachtree Street, N.E.
Atlanta, Georgia 30309-3521
Tel: (404) 572-4600
Fax: (404) 572-5100

11 Attorneys for Defendant
12 GOOGLE INC.

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 ORACLE AMERICA, INC.,

17 Plaintiffs,

18 v.
19 **DEFENDANT GOOGLE INC.'S
20 RESPONSE TO TENTATIVE TRIAL
21 PLAN (DKT. NO. 1488)**

22 GOOGLE INC.,

23 Defendant.

24 Dept.: Courtroom 8, 19th Fl.
25 Judge: Hon. William Alsup

1 Pursuant to the Court’s request, Defendant Google Inc. (“Google”) respectfully submits
 2 the following comments concerning the Tentative Trial Plan dated February 8, 2016 (Docket No.
 3 1488).

4 Google largely concurs with the Court’s proposed trial plan. However, Google requests
 5 the Court’s advance permission (as noted on page 2, line 5 of the Tentative Trial Plan) to have
 6 one of its six pretrial motions *in limine* consist of a *Daubert* motion presented in 20 pages of
 7 briefing, as opposed to the standard 10 pages. Specifically, Google submits that it requires these
 8 additional pages for its *Daubert* motion challenging the expert opinion testimony of Oracle’s
 9 damages expert, James Malackowski. Mr. Malackowski has presented a lengthy opening
 10 damages expert report that totals 238 pages including exhibits. In that report, Mr. Malackowski
 11 offers opinions that seek to support Oracle’s claim for disproportionately large damages, but he
 12 does so without providing the analysis required under governing law. For example, in his attempt
 13 to support Oracle’s bid to help itself to Google’s indirect advertising revenues, Mr. Malackowski
 14 fails to establish the required causal nexus between those revenues and any use of the allegedly
 15 infringed 37 Java APIs. And, in seeking to support an award to Oracle of lost license profits,
 16 Mr. Malackowski fails to tie those supposed losses to the allegedly infringed 37 Java APIs,
 17 impermissibly basing the claim entirely on a misreading of an already speculative Sun profit
 18 projection. In order to provide a complete discussion of the support for this *Daubert* motion
 19 directed to Mr. Malackowski’s lengthy proposed testimony, Google respectfully requests 20
 20 pages to brief that motion.

21 Google further states that (a) it does not oppose the inclusion of the Marshmallow version
 22 of the Android Open Source Platform on the list of Android versions in play per the Court’s
 23 comments at page 2, lines 20 to 22, of the Tentative Trial Plan; and (b) the parties agree that a
 24 juror questionnaire would be helpful in this case. The parties are jointly working on a proposed
 25 jury questionnaire and will submit any mutually agreed-upon version for the Court’s
 26 consideration by Friday, February 19.

1 Dated: February 16, 2016

KEKER & VAN NEST LLP

2
3 By: /s/ Robert A. Van Nest
4 ROBERT A. VAN NEST
CHRISTA M. ANDERSON
DANIEL PURCELL

5 Attorneys for Defendant
6 GOOGLE INC.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28